

Order

Michigan Supreme Court
Lansing, Michigan

September 29, 2010

Marilyn Kelly,
Chief Justice

140945

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

KEVIN KROHN,
Plaintiff-Appellant,

v

SC: 140945
COA: 283862
Lenawee CC: 06-002176-NF

HOME-OWNERS INSURANCE COMPANY,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the January 26, 2010 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether the experimental surgical procedure that the plaintiff underwent in Portugal was a “reasonably necessary” allowable expense under the no-fault act, MCL 500.3107(1)(a); (2) whether the procedure was “lawfully rendered” under MCL 500.3157, given that it is not approved to be performed in this country by the United States Food and Drug Administration (FDA); (3) whether the Court of Appeals erred in sua sponte raising the issue whether the trial court failed to perform its gatekeeper function under MRE 702 and *People v Davis*, 343 Mich 348 (1955); *Frye v United States*, 54 App DC 46; 293 F 1013 (1923), to exclude testimony from the plaintiff’s medical witness regarding the experimental surgical procedure, see *Craig v Oakwood Hosp*, 471 Mich 67, 82 (2004); (4) whether the Court of Appeals properly relied on *SPECT Imaging, Inc v Allstate Ins Co*, 246 Mich App 568, 578-579 (2001), for the proposition that a no-fault insurer is only liable for scientifically proven medical tests or procedures; and (5) whether the issue of reasonable necessity under MCL 500.3107(1)(a) may include consideration by the trier of fact of the success of the experimental procedure or of any degree of improvement in the plaintiff’s condition.

The Michigan Association for Justice and the Michigan Defense Trial Counsel, Inc. are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



d0922

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 29, 2010

Corbin R. Davis

Clerk